

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

TODD WALSH,

Plaintiff,

vs.

SHERIFF GARRY LUCAS, individually and  
as employee, agent and/or Sheriff for Clark  
County; CLARK COUNTY, a municipal  
corporation; DEVIN ALLEN, individually  
and as employee for Clark County; JENNI  
ZUPFER, individually and as employee for  
Clark County, LILLY BEASLEY,  
individually and as employee for Clark  
County, JOHN/JANE DOE, individually and  
as employee for Clark County,

Defendants.

No. 3:15-cv-05440-RJB

ORDER DENYING MOTION FOR  
RECONSIDERATION AS TO RULING  
ON DELIBERATE INDIFFERENCE  
CLAIM BY DEFENDANTS DEVIN  
ALLEN, JENNI ZUPFER, AND LILLY  
BEASLEY

THIS MATTER, comes before the Court on a motion for reconsideration filed by  
defendants Devlin Allen, Jenni Zupfor, and Lilly Beasley (collectively, "Defendants"). Dkt. 20.  
Response has not been requested by the Court, so the Court will not consider Plaintiff's  
"Reply". Dkt. 22. *See* LCR 7(h)(3). The Court has reviewed the motion and the remainder of  
the file herein.

BACKGROUND

Defendants ask the Court to reconsider its ruling on Defendants' motion to dismiss  
(Dkt. 13) only as to Count 1. In Count 1, Plaintiff alleges under 28 U.S.C. § 1983 that  
Defendants acted with deliberate indifference in violation of the Eighth Amendment right to be

ORDER DENYING MOTION FOR RECONSIDER-  
ATION BY DEFENDANTS DEVIN ALLEN, JENNI  
ZUPFER, AND LILLY BEASLEY - 1

1 free from cruel and unusual punishment, by denying Plaintiff adequate medical diagnosis and  
 2 treatment after he sustained a serious back injury while in custody. Dkt. 1-2. Defendants  
 3 previously argued that Count 1 should be dismissed for failure to state a claim, a motion that  
 4 the Court denied. Dkt. 13, 20.

### 5 STANDARD

6 Motions for reconsideration are disfavored. LCR 7(h)(1). The Court will ordinarily deny  
 7 them absent a showing of manifest error or new facts or legal authority. *Id.* Upon a movant  
 8 demonstrating one of these three grounds, the movant must then come forward with “facts or  
 9 law of a strongly convincing nature to induce the court to reverse its prior decision.” *Donaldson*  
 10 *v. Liberty Mut. Ins. Co.*, 947 F.Supp. 429, 430 (D.Haw.1996). A motion for consideration is not  
 11 an opportunity for an unhappy litigant to argue new theories, and “a rehash of the arguments  
 12 previously presented affords no basis for a revision of the Court's order.” *Illinois Central Gulf*  
 13 *Railroad Co. v. Tabor Grain Co.*, 488 F.Supp. 110, 122 (N.D.Ill.1980). *See also, Above the*  
 14 *Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D.Va.1983) (“Plaintiff  
 15 improperly used the motion to reconsider to ask the Court to rethink what the Court had already  
 16 thought—rightly or wrongly.”).

### 17 DISCUSSION

18 Defendants take issue with the last sentence in the following relevant portion of the  
 19 Order:

20 “The individual defendants argue that Plaintiff does not meet the deliberate indifference  
 21 standard because the Complaint alleges that ‘none of the medical providers **recognized**  
 22 the seriousness of [Plaintiff’s] injuries.’ Dkt. 13, at 8 (emphasis added), quoting from  
 23 Dkt. 1-2, at 4, ¶17. From this argument, it appears that the individual defendants believe  
 24 “deliberate indifference” requires some degree of intent, but this argument misstates the  
 25 law. While deliberate indifference may be satisfied by a conscious disregard of a  
 consequence, it may also occur through reckless disregard.” Dkt. 21, at 2, quoting Dkt.  
 20, at 4.

1 Criticizing the last sentence of the above paragraph, Plaintiff argues that “even the authority  
2 relied upon by the Court reflects that the concept of ‘reckless disregard’ . . . requires reckless  
3 disregard of a known danger.” Dkt. 21, at 2.

4 Defendants overlook the word “consequence” in the last sentence of the relevant portion  
5 of the Court’s ruling. Reckless disregard of a consequence includes the nature of the  
6 consequence—here, a known danger of a serious back injury. Plaintiff’s allegation that  
7 Defendants failed to “recognize the seriousness of [Plaintiff’s] injury” is a sufficient allegation  
8 under the language of the complaint. When one complains—and complains again—of a back  
9 issue to medical providers who take no actions, that is evidence enough to argue that the  
10 medical providers knew that, if their choice of inaction was erroneous, the consequences would  
11 be danger of a serious back injury. *See, e.g., See Lolli v. Cnty. of Orange*, 351 F.3d 410, 421  
12 (9th Cir. 2003) (Circumstantial evidence of plaintiff’s protestations about diabetes condition  
13 and need for food supports the inference that officers knew of risk of harm), citing *Farmer v.*  
14 *Brennan*, 511 U.S. 825, 837-42 (1994).

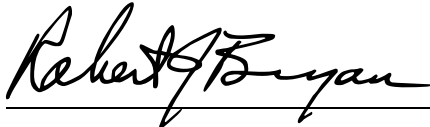
15 The allegations supporting Count 1 are sufficient to carry the claim forward beyond the  
16 pleadings stage. The motion for reconsideration should be denied.

17 \* \* \*

18 Therefore, it is hereby ORDERED that Defendant’s motion for reconsideration is  
19 DENIED. Dkt. 21.

20 IT IS SO ORDERED.

21 ENTERED this 1<sup>st</sup> day of September, 2015.

22  
23 

24 ROBERT J. BRYAN  
25 United States District Judge